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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,284	09/22/2000	Thomas D. Dickson JR.	8132	1192

7590

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EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/667,284

Applicant(s)

DICKSON ET AL.

Examiner

Drew E Becker

Art Unit

1761

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-12 and 41-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-12 and 41-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The declaration under 37 CFR 1.132 filed December 13, 2004 is insufficient to overcome the rejection of claims 1-2, 4-12, and 41-44 based upon the prior art as set forth in the last Office action because: there are new grounds of rejection due to the amendment.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This application does not appear to disclose the term "mechanical refrigeration".

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 1761

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 4-6, 8-10, 12, 42, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al in view of Miller [Pat. No. 5,778,761].

Reese et al teach a single-station beverage device comprising a blending container (Figure 2, #18), a blending location and device (Figure 2, #16), foodstuff supply lines (Figure 2, #64), an ice supply (Figure 2, #12), the foodstuff inherently acting as a nutritional supplement, cooling the foodstuff via draining ice water (column 4, line 7), a control panel and information processor (Figure 1, #14; column 5, lines 15-27), and a foodstuff supply container (Figure 2, #40). Reese et al do not recite a pump (claims 1 & 42), particular flavors such as fruit and coffee (claims 4 & 6), a cleaning location and cleaning liquid supply line (claim 8), and six foodstuff supply lines (claim 10). Miller teaches a single-station beverage device comprising a pump (Figure 6, #216), flavor such as fruit and coffee (column 5, line 54), a cleaning fluid supply line (Figure 6, #129), a cleaning location (Figure 4), and six foodstuff supply lines (Figure 6, #128). It would have been obvious to one of ordinary skill in the art to incorporate the features of Miller into the invention of Reese et al since both are directed to single-station beverage devices, since Reese et al already included multiple foodstuffs and tropical flavors (Figure 1, #58; column 1, line 11), since the pump of Miller would have permitted the foodstuff supply containers to be placed in any location within the device, such as below the blending container, which would have provided easier refilling of the foodstuff supply containers as shown by Miller (Figure 1, #210), and since the cleaning fluid of Miller et

Art Unit: 1761

al would have helped keep the device and container of Reese et al clean and sanitary, thereby preventing bacteria growth.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al, in view of Miller, as applied above, and further in view of Farrell [Pat. No. 6,326,047].

Reese et al and Miller do not recite a peristaltic pump. Farrell teaches a blending device comprising a peristaltic pump (Figure 5, #26). It would have been obvious to one of ordinary skill in the art to incorporate the peristaltic pump of Farrell into the invention of Reese et al, in view of Miller, since all are directed to beverage blending devices, since Miller et al already included a pump (Figure 6, #216) but did not specify the exact type, and since peristaltic pumps were a commonly known means to provide a metered supply of viscous liquid as shown by Farrell.

7. Claims 7, 41, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al in view of Gagliano [Pat. No. 6,449,970].

Reese et al teach a single-station beverage device comprising a blending container (Figure 2, #18), a blending location and device (Figure 2, #16), foodstuff supply lines (Figure 2, #64), an ice supply (Figure 2, #12), the foodstuff inherently acting as a nutritional supplement, cooling the foodstuff via draining ice water (column 4, line 7), a control panel and information processor (Figure 1, #14; column 5, lines 15-27), and a foodstuff supply container (Figure 2, #40). Reese et al do not recite a mechanical refrigeration system for the food supply lines (claim 7), a refrigerated cabinet for the food supply lines (claim 41), or a refrigeration system separate from the ice hopper

Art Unit: 1761

(claim 43). Gagliano teaches a single-station beverage device comprising food supply lines (Figure 2, #30 & 42), mechanical heat exchangers (Figure 2, #34 & 44), a refrigerated cabinet (Figure 2, #10), and a refrigeration system (Figure 2, #48). It would have been obvious to one of ordinary skill in the art to incorporate the refrigeration features of Gagliano into the invention of Reese et al since both are directed to single-station beverage devices, since Reese et al already included a means for cooling the food supply containers (column 4, line 7), since consumers often want cold beverages without ice, and since the refrigeration system of Gagliano would have provided the added benefit of providing a cold beverage without having to resort to the use of ice (column 1, line 55 to column 2, line 9).

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fry [Pat. No. 5,732,856], Ervin [Pat. No. 6,772,675], Van Der Veer [Pat. No. 4,653,281], Black et al [pat. No. 5,095,710], Dickson Jr [Pat. No. 6,811,303], Worth et al [Pat. No. 3,358,609], Himi [pat. No. 4,919,075], and Herbert [pat. No. 4,681,030] teach beverage devices.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-2, 4-12, and 41-44 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 1761

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Drew E Becker  
Primary Examiner  
Art Unit 1761

  
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PRIMARY EXAMINER  
23-0